

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:CTM:SF:POSTU:102042-02

PKWebb

date: JUN 14 2002

to: Georgene Bonovich, Revenue Agent

from: Area Counsel
(Communications, Technology, and Media: Oakland)

subject: Notice of Beginning of Administrative Proceeding
U.I.L. #: 6223.00-00

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice may also contain confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, may be subject to the attorney work product privilege. Accordingly, any recipient of this document, including Examination or Appeals, may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This document may not be disclosed to the taxpayer or its representatives.

This memorandum responds to your request for advice on the below stated issue. This advice relies on facts provided by you to our office. If you find that any facts are incorrect, please advise us immediately so that we may modify and correct this advice. This advice is subject to 10-day post review by the National Office. CCDM 35.3.19.4. Accordingly, we request that you do not act on this advice until we have advised you of the National Office's comments, if any, concerning this advice.

Facts

Your audit team recently began a partnership audit governed by the Tax Equity and Fiscal Responsibility Act of 1982. See I.R.C. §§ 6221-6232.¹ The partnership under audit consists and

¹ All citations herein are to United States Code, Title 26, the Internal Revenue Code, unless otherwise stated.

has always consisted of fewer than 100 partners. You mailed a notice of beginning of administrative proceeding ("NBAP") which informed the recipients of the beginning of the partnership audit. Each NBAP listed the multiple tax years which are under audit. In other words, you used a single NBAP for multiple tax years rather than issuing separate NBAPs for each of the audited tax years.

Issue

Whether or not a single NBAP can be used for multiple tax years rather than issuing separate NBAPs for each of the audited tax years.

Short Answer

There is no statute or regulation requiring a separate NBAP for each separate audited tax year. However, you must exercise caution when issuing an NBAP for multiple tax years.

Analysis

The Service is required to give notice of the beginning and completion of a partnership proceeding (audit). I.R.C. § 6223(a). The Service must mail a copy of a NBAP to each partner whose name and address is furnished to the Service. Id. The NBAP should be mailed using the names, addresses and profits interests shown on the partnership return (K-1s), any information provided by the tax matters partner ("TMP") and any information provided by a person other than the TMP (so long as certain regulation requirements are met). See I.R.C. § 6223(c); Treas. Reg. § 301.6223(c)-1T. In partnerships with fewer than 100 partners, all of the partners are entitled to Section 6223 notice, i.e., all of the partners are entitled to a NBAP. See I.R.C. § 6223(b). Pass-thru partners are required to provide notice to indirect partners. I.R.C. § 6223(h). The NBAP must proceed the issuance of a Final Partnership Administrative Adjustment ("FPAA") by 120 days or the partners not receiving notice will be entitled to certain statutory rights, namely that they can elect to treat partnership items as non-partnership items. See I.R.C. § 6223(d), (e).

We could find no requirement in the Code, regulations or Internal Revenue Manual ("IRM") specifying that a separate NBAP must be utilized for each separate tax year under audit. In fact, the sample NBAP provided in the IRM states: "Tax Year(s) Ended:_____." See IRM, Exhibit 4.29.5-4 (1-1-1999). Thus, it appears that a single NBAP can be utilized to notify partners of the beginning of a proceeding for multiple tax years.

However, caution is warranted when issuing a single NBAP for multiple tax years. Section 6231(a)(7) provides the definition of a TMP. The determination of who is a partnership's TMP is made separately for each partnership tax year. See Treas. Reg. § 301.6231(a)(7)-1. Thus, if several years are under audit for the same partnership, it is theoretically possible that the Service would need to deal with a different TMP for each different tax year. Therefore, a Service agent must use caution in mailing a multiple year NBAP, such that the appropriate TMP is identified for each appropriate year. Additionally, partners tend to join and leave partnerships over a given period of time. For disclosure purposes, caution should be exercised so that individuals are only notified of a partnership audit for those years during which they were a partner. See I.R.C. § 6103.

Conclusion

Please telephone attorney Paul K. Webb at (415)744-9217 if you have any questions or comments about this memorandum.

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By: 

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*NSAR 10 day post-review.

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